

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-843

March 21, 2002

EMERA ENERGY SERVICES, INC.
Application for License to Operate as a
Competitive Electricity Provider

ORDER GRANTING
LICENSE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we license Emera Energy Services, Inc. to operate as a competitive electricity provider in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On December 6, 2001, Emera Energy Services, Inc. (EES) applied to the Commission for a license to operate in Maine as a competitive electricity provider to provide standard offer service, as provided in Chapter 305. On December 13 and 20, 2001, EES filed additional information to supplement its earlier filing. On January 18 and 25, and February 4, 2002, EES filed amendments to its application and related information to support a license to provide service directly to consumers.

EES's application identifies it as an affiliate of Bangor Hydro-Electric Company (BHE), a regulated transmission and distribution utility in Maine. On December 6, 2001, BHE filed a request for approval of proposed reorganization and approval of affiliate agreements with EES. On March 21, 2002, the Commission issued an order that approved BHE's request under specified conditions. *Bangor Hydro-Electric Company, Request for Approval of Proposed Reorganization and Proposed Affiliate Agreements*, Docket No. 2001-841 (BHE Reorganization Order). One of those conditions restricts the area in which EES may market and thus relates directly to the license that EES has requested in this proceeding. Accordingly, we condition EES's license as described herein.

A. Type of Service Proposed

EES's amended application states that the proposed licensee "is applying to become a competitive electricity provider to provide electricity service to all customer classes, except for residential and small commercial, within all service territories in Maine." In the BHE Reorganization Order, the Commission imposed a condition prohibiting EES from providing retail service within BHE's service territory during the term of an employee

lease. Accordingly, EES is authorized to provide retail electricity service within all service territories in Maine except that of BHE. EES may seek to amend its license so as to provide service within BHE's service territory upon removal by the Commission of the service territory restriction contained in the BHE Reorganization Order. Consistent with its license application, EES is authorized to provide service to customers in the medium and large non-residential classes.

B. Fee Paid

With its application, EES paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

III. **FINANCIAL ISSUES**

A. Security

Chapter 305 § 2(B)(1)(a)(i) requires a security instrument from competitive electricity providers that offer service to customers with a demand less than 100 kilowatts. When we adopted Chapter 305, we expressed our intent to apply the financial security requirement "only to those providers who market the sale of electricity to consumers who are protected by the consumer protection rules; that is, customers with a demand of 100 kW or less." *Public Utilities Commission, Licensing Requirements, Enforcement and Consumer Protections Provisions for Competitive Electric Providers (Chapter 305)*, Order Adopting Rule and Statement of Factual and Policy Basis, Docket No. 98-608 at 6 (Feb. 2, 1999)

On April 10, 2000, P.L. 1999, ch. 657, An Act Relating to Electric Industry Restructuring became effective. A provision of that Act requires the Commission to amend the threshold for consumer protections established under section 4 of Chapter 305, and directs that those protections "apply to residential and small commercial consumers as defined in Title 35-A, section 3203, subsection 4," as amended by that Act. That new section defines, for purposes of subsection 4, "residential consumer" as:

a consumer defined as residential under the terms and conditions of the consumer's transmission and distribution utility.

That section further defines, for the purposes of subsection 4, "small commercial consumer" as:

in the case of a consumer served by an investor-owned transmission and distribution utility, a nonresidential consumer that meets the availability criteria to take service under a core customer class of the transmission and distribution utility that does not pay a demand charge to the transmission and distribution utility, or in

the case of a consumer served by a consumer-owned transmission and distribution utility, a nonresidential consumer with a demand of 20 kilowatts or less.

In light of our intent to link the financial security requirement with the applicability of the consumer protection rules, and the statutory change in the application of consumer protections described above, we believe it is appropriate on our own motion to waive, pursuant to § 5 of Chapter 305, the applicability of the security requirement contained in § 2(B)(1)(a)(i) of Chapter 305. We thus allow EES to serve consumers with a demand under 100 kilowatts, provided they are not residential or small commercial consumers, without a financial security instrument.

B. Showing of Professional and Financial Capability

EES will operate as a competitive electric provider offering retail service only to consumers other than residential or small non-residential customers, and has stated that it will hold retail consumer funds. EES provided information to demonstrate its financial capability to engage in its proposed business as required by section 2(B)(1)(a)(ii) and 2(B)(1)(b) of Chapter 305. We have reviewed that information and find that it complies with the requirements of Chapter 305.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

EES, as a competitive electricity provider in Maine, must demonstrate that it has the technical ability to enter into necessary interconnection arrangements or contracts with Maine utilities, pursuant to section 2(B)(2)(a) of Chapter 305. In its amended application, EES provided information demonstrating its ability to enter into such arrangements or contracts, although it stated that it had not yet reached such agreements. Accordingly, EES shall not act to enroll consumers or provide generation service until all required contracts have been executed consistent with Commission rules. EES shall notify the Commission when all such contracts have been executed.

Section 2(B)(2)(b) of Chapter 305 requires an applicant to demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity meeting all applicable requirements for the bulk power system control area in which the applicant would provide service. EES filed information to demonstrate its technical capability to meet that requirement within Northeast Power Coordinating Council control area. We have reviewed that information and find that it complies with the requirements of Chapter 305. EES also documented that it will meet the NEPOOL transaction provisions required by section 2(B)(2)(b)(ii) of Chapter 305.

B. Resource Portfolio

Pursuant to section 2(B)(4) of Chapter 305, EES, as a competitive electricity provider in Maine, must demonstrate its ability to meet the resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules. EES filed information to demonstrate its ability to meet these requirements. We have reviewed that information and find that it complies with the requirements of Chapter 305.

V. CONSUMER PROTECTION ISSUES

A. Showing of Fitness

In its application, EES provided information required by Chapter 305, section 2(B)(3), related to enforcement proceedings and consumer complaints. We have reviewed that information and find that it meets the requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

EES will operate as a competitive electricity provider offering retail service only to consumers other than residential or small non-residential customers. Pursuant to section 2(B)(6) of Chapter 305, EES is not required to demonstrate its ability to comply with applicable consumer protection requirements.

C. Do-Not-Call List

Chapter 305, section 4(I) states that "[t]he Commission will maintain or cause to be maintained a 'Do-Not-Call' list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers." We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, EES shall comply with the following requirements.

EES must comply with the requirements of the Telephone Consumer Protection Act,¹ the Telemarketing and Consumer Fraud and Abuse Prevention Act,² and related rules of the Federal Communications Commission³ and Federal Trade Commission.⁴ EES must comply with those requirements and must maintain its own do-

¹47 U.S.C. § 227

²15 U.S.C. §§ 6101-6108

³47 CFR 64.1200

⁴FTC Telemarketing Sales Rule, 16 CFR Part 310

not-call list as required by those laws and rules, for all intrastate and interstate telemarketing of Maine consumers. EES shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(l)(1). EES shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. EES shall provide a copy of that list to the Commission upon request.

Further, each month, EES must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁵ EES shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(l)(1).

D. Other Consumer Protections

Competitive electricity providers must provide certain protections to consumers. As a condition of licensing, EES:

1. shall obtain a consumer's authorization before serving the consumer;
2. may not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer;
3. must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10;
4. may not collect or seek to collect unreasonable costs from a customer who is in default;
5. must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f;
6. may not initiate a telephone solicitation call to a consumer who has notified the competitive electricity provider of the consumer's wish not to receive telephone solicitation calls made by or on behalf of the competitive electricity provider;
7. must provide at least once annually to a customer any information disclosures required by the Commission by rule; and

⁵Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

8. must comply with any other applicable standards or requirements established by the Commission by rule.

35-A M.R.S.A. § 3203(4-A).

VI. ISSUES RAISED BY POTENTIAL APPEAL

On February 5, 2002, Competitive Energy Services appealed the Commission's finding that Maine's Restructuring Act, 35-A M.R.S.A. § 3206-A(2), does not prohibit an affiliate of BHE from providing competitive electricity service in Maine. On March 7, 2002, the appeal was dismissed. However, there remains a potential for EES's authorization to provide service to be appealed.

An appeal that puts at risk EES's authority to provide retail service raises concerns. To address these concerns, EES has agreed, as a condition of its license, to disclose the existence of an appeal, if one is taken, and the potential risks to the customers if EES loses its authority to provide retail service in Maine (including the existence and operation of the opt-out fee provisions in Chapter 301). The disclosure will be in writing and provided to prospective customers prior to the execution of the service contract. In addition, EES will arrange for another licensed provider to fulfill its remaining contractual obligations to customers. The arrangements for the alternate provider will be in place prior to the final resolution of the appeal, and the obligation for EES to arrange for the alternate provider will be included in its retail contracts.⁶ These conditions are effective until the end of the appeal period if there is no appeal that challenges EES's authority to provide retail service or, if there is such an appeal, until a final resolution of the appeal.⁷

VII. ADDITIONAL PROVISIONS

EES must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. EES must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, in other parts of this Order, and in the BHE Reorganization Order.

⁶ The inclusion of these conditions does not imply any view of the Commission as to the validity of any issue that may be raised on appeal.

⁷ Because EES agreed to these conditions under the unusual circumstances involving the dismissed appeal and potential for a future appeal, the conditions in this section of the Licensing Order should not be viewed as precedent for future licensing proceedings.

VIII. ORDERING PARAGRAPHS

Accordingly, we

1. license Emera Energy Services, Inc. to operate as a competitive electricity provider pursuant to Chapter 305 of the Commission's Rules, to offer retail service to consumers other than residential and small non-residential customers in Maine, except for the service territory of Bangor Hydro-Electric Company, in which territory this license is not valid;
2. order Emera Energy Services, Inc. to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers;
3. order Emera Energy Services, Inc. to observe all other consumer protection requirements contained in Part V(D) of this Order;
4. order Emera Energy Services to comply with all conditions stated in this Order; and
5. order that this license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules;

Dated at Augusta, Maine, this 21st day of March, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.